



East Herts Council

Capability Policy

Policy Statement

**Policy Statement No 2 (Issue No 4)
May 2021**

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CAPABILITY POLICY

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1. PURPOSE AND SCOPE OF PROCEDURE

- 1.1 East Herts Council aims to provide a high quality service to all our residents, customers and stakeholders. In order to do so we require all employees to achieve and maintain a high standard of performance in their work. We provide explicit standards and training to all our managers to ensure their commitment and capability to support, guide and develop employees.
- 1.2 In cases where despite an appropriate level of support, guidance and training, an employee is failing to or unable to meet the required standards of performance, this procedure will be used to ensure that fair, effective and reasonable action is taken.
- 1.3 The procedure is designed to give employees the opportunity to improve individual performance and not to be punitive. Flowcharts summarising the procedure can be found in Appendix A.
- 1.4 This policy applies to all employees except for Chief Officer level or any other nominated statutory posts, for these post holders the principles and structure will apply but it should be used in conjunction with procedures set out in the Constitution and will involve Members as appropriate with exceptions as set out in 1.6 below.
- 1.5 Members of Leadership Team (LT) (excluding the Statutory Post Holders and the Chief Officers) will be managed through this procedure with the manager role allocated by the Chief Executive Officer (CEO) as all LT members report to the CEO.
- 1.6 This procedure does not apply to the following:

- (a) Employees during their probationary period of employment, or any probationary extension period. Please refer to our Probationary Procedure.
 - (b) Incompetence (gross or otherwise), gross negligence and or incapability or other poor performance where it arises out a wilful or deliberately neglectful derogation of duties. Please refer to our Disciplinary Procedure.
- 1.7 In cases where lack of capability or difficulties with performing all aspects of the job are considered to be attributable to ill health or a disability, this may be dealt with either under this procedure or the Absence Management Policy (or both) as considered appropriate by East Herts Council on a case-by-case basis.
- 1.8 Any incremental increase that would normally be due will be withheld at the formal stages of this procedure. If by the end of the review period at any formal stage the required improvement has been made and therefore the employee is no longer at a formal stage, the incremental increase will resume and take effect from the 1st of the following month and then continue from 1st of April as appropriate.
- 1.9 East Herts Council is firmly committed to meeting its responsibilities towards employees with a disability in accordance with the Equality Act 2010. Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that the Council could make to working arrangements. The Council may seek recommendations by relevant medical advisers, in consultation with the employee.
- 1.10 If an employee is subject to additional allegations (e.g. misconduct or issues with attendance), then this procedure may run concurrently with the other relevant procedure(s).
- 1.11 At all stages of the following procedure, where specified staff/managers are designated to handle different stages, East Herts

Council reserves the right to reasonably substitute suitable alternatives.

- 1.12 This procedure does not form part of any employee's contract of employment with East Herts Council and it may be amended at any time.

2. PRINCIPLES

- 2.1 East Herts Council managers will set out clear expectations of the performance standards expected of staff in relation to the:

- job description / performance objectives for their role
- competence profile for their role

- 2.2 East Herts Council will offer appropriate support, supervision and training to any employee where there is a significant change in the content or level of his/her job.

- 2.3 Where there is a change in required standards of performance, the new standards will be explained to the employee and appropriate support will be offered to achieve the standards.

- 2.4 Any review period set by a manager under this procedure will be at the manager's reasonable discretion in line with targets set however it will normally be between 1 and 3 months.

- 2.5 Managers may be supported by a member of Human Resources at all stages of this procedure (or any other support the Council determines as appropriate).

- 2.6 Managers may, in exceptional circumstances, deem it necessary to temporarily redeploy an employee immediately from their normal job.

3.0 RESPONSIBILITIES

3.1 Managing performance is the responsibility of both managers and employees.

3.2 Employees are expected to:

- Take full accountability for their own performance and behaviour
- Make sure they understand what is expected of them
- Perform to a satisfactory level in line with council objectives, values and behaviours
- Commit to improve where concerns over performance have been raised
- Work with managers to address any underlying issues which may be affecting performance
- Take ownership of their personal learning and development needs and meeting the council's values and behaviours

3.3 Managers are expected to:

- Have completed the managing performance training events arranged by HR and any refresher training as appropriate or recommended
- Seek advice and guidance from HR on the interpretation and implementation of this policy and adhere to advice given
- Try to rectify any performance issues as early as possible with the aim of resolving them at an informal level
- Ensure that employees are aware of the performance standards, values and behaviours expected and support employees in achieving them
- Monitor the performance of employees and ensure that 121 and Performance Development Review (PDR) meetings are carried out in order to identify any issues
- Set realistic and measurable standards of performance for the job and share these with the employee
- Ensure that employees are made aware of the consequences of failing to meet the required performance standards
- Ensure that any employees rated as Immediate Improvement required under the PDR process, their performance is being formally managed under this policy.

3.4 **Leadership Team members** (excluding Chief Officers and Statutory Post Holders who will be managed by the constitution and this policy see 1.4):

In order to ensure that the CEO is available to consider any appeal the following roles will be allocated at the informal stage and formal stages 1 to 3:

- Informal Stage – the CEO will allocate the Manager role to a Statutory Post Holder either the Section 151 Officer or Monitoring Officer as appropriate.
- Stage one – the manager role would remain with the Statutory Officer designated by the CEO.
- Stage 2 – the statutory officer would remain in the manager role with Deputy Chief Executive Officer hearing the matter at stage 2.
- Stage 3 – the statutory officer would remain in the manager role with Deputy Chief Executive Officer hearing the matter at stage 3.
- Appeal – should the matter reach the appeal stage this would be heard by the CEO.

4. THE RIGHT TO BE ACCOMPANIED

4.1 The employee will have the right to be accompanied at all meetings/hearings from Stage 1 (formal stages) onwards by a work colleague or a trade union representative of their choice.

4.2 The accompanying person has the statutory right to:

- address the meeting to put the employee's case
- sum up that case, and
- respond on the employee's behalf to any view expressed at the meeting

- 4.3 The accompanying person does not have the right to answer questions on the employee's behalf. They may ask questions and will be permitted to confer with the employee.
- 4.4 It is the employee's responsibility to request their chosen companion to accompany them to the formal interview or appeal, and to supply all relevant information and documentation to them.
- 4.5 If the accompanying person is unavailable at the time a hearing is scheduled and will not be available for more than five working days after, the employee may be asked to choose someone else.

5.0 Informal Stage

- 5.1 In the first instance, performance issues should normally be dealt with informally between the employee and their manager as part of day-to-day management. However, in serious cases it may be considered appropriate to deal with the issues under the formal procedure from the outset (see 6.0 below).
- 5.2 The Informal meeting should cover the following:
- clarify the required standards;
 - identify areas of concern;
 - establish the likely causes of poor performance;
 - identify any training needs or other support e.g. coaching;
 - set targets for improvement and a time-scale for review; and
 - ensure the employee is aware that if the set targets and the required improvement is not sufficiently met during the review period the procedure will continue at formal stage 1
- 5.3 A note of any such informal discussions should be placed on the employee's personnel file and a copy should also be provided to the employee for their records.
- 5.4 Managers should explore whether it would be useful at this stage to refer the employee to Occupational Health, seeking agreement from the employee beforehand.

5.5 Employees will not normally be dismissed for performance reasons without previous warnings.

6.0 Formal Stage

6.1 If East Herts Council has concerns about an employee's performance, it will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing an employee's personnel file, gathering any relevant documents, monitoring their work and, if appropriate, interviewing the employee and/or other individuals confidentially.

6.2 East Herts Council reserves the right, in very serious cases, to omit one or more of the earlier stages set out below.

6.3 At least 5 days' prior to any formal meeting under Stages 1, 2 or 3 below, East Herts Council will notify the employee in writing of the meeting, together with its concerns over performance, the reasons for those concerns and the likely outcome if it is decided after the hearing that the employee's performance has been unsatisfactory. The letter will also include, where appropriate:

- a summary of relevant information gathered as part of any investigation;
- a copy of any relevant documents which will be used at the hearing; and
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible while maintaining confidentiality will be provided.
- should the employee wish to submit any documents to be discussed at the hearing, they should provide them at least 2 working days before the hearing.

6.4 Stage 1

6.4.1 The aims of the meeting will be to:

- Explain clearly how the employee's current performance fails to meet the required standards and go through any evidence gathered.
- Allow the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- Identify the likely causes of poor performance and whether there are further measures that may improve performance (e.g. additional training or supervision).
- discuss with the employee if they want to be considered for voluntary redeployment if appropriate. HR support will be provided if the employee wishes to explore this to determine what may be available within the Council as potential options. This would only be explored if the employee requests this. Pay protection will not normally apply in a capability redeployment and priority for redeployment would be given to staff at risk of redundancy or due to a disability (link to redundancy policy section to be added).
- Discuss targets for improvement and a time-scale for review (as a guide the review period should normally be between 1 to 3 months). The Performance Improvement Plan (PIP) template in Appendix B should be used or adapted as appropriate to set out clearly the improvement required and any support agreed.
- Explain to the employee that if their performance does not improve sufficiently it may become necessary during or at the end of the review period to review their performance in line with Stage 2 of the procedure.
- During the review period the manager must continually monitor the employee's performance and hold regular progress meetings with the employee.

- 6.4.2 The manager reserves the right to adjourn a hearing to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 6.4.3 The outcome of the meeting and the action to be taken must be recorded by the manager in writing through the stage 1 letter and a copy given to the employee with the PIP as promptly as possible. The letter must warn the employee that unless performance improves to the required standard during or by the end the review period then the process will move to stage 2. A copy should also be placed on the employee's personnel file.
- 6.4.4 If by the end of the review period the required improvement has been made, the employee will be told of this and advised that should there be any further concerns with performance within 12 months of the review date the procedure will continue from the beginning of Stage 1.
- 6.4.5 If the line manager feels that there has been some improvement in performance but there are still some areas of concern they should seek HR support to consider the option to extend the review period.

6.5 Stage 2

- 6.5.1 If the employee's work performance does not improve to a satisfactory level during or by the end of the review period, the line manager must prepare a report to refer the matter to a member of the Leadership Team.
- 6.5.2 The Leadership Team member will write to the employee asking them to attend a formal stage 2 hearing in accordance with 6.3 above.
- 6.5.3 At the meeting, the employee's line manager will present the details of the matter, including earlier discussion(s), the steps taken to

encourage improvement and any supporting facts and/or material. The employee will then be given the opportunity to present their views in response to the manager's case.

6.5.4 Following the hearing, the Leadership Team member will consider their decision and the action, if any, to be taken. The Leadership Team member may wish to retire to consider their decision. The decision should be confirmed in writing to the employee.

6.5.5 Where the LT member decides that performance is sufficient this will be confirmed and the employee will be informed that if performance is unsatisfactory again in the next 12 months from the end of stage 2 review period they will be subject to stage 2.

6.5.6 Where it is established that the performance is unsatisfactory, the Leadership Team member will do the following:

- consider whether voluntary redeployment is appropriate and available within the Council. Any offer should be made in writing, explaining why it is being made and the consequences of refusing it. The post does not have to be on the same scale and pay protection would not normally apply ([Add link to re-org](#)). The employee should be given reasonable time to consider the offer and be advised to discuss it with their accompanying person (if applicable).

(Where such redeployment is agreed, the employee's performance must continue to be reviewed and if the line manager of the new post considers performance is unsatisfactory the matter should be re-referred to a member of the Leadership Team at the stage 2 or stage 3 level depending on the circumstances.)

- If voluntary redeployment is unsuitable, unavailable or declined by the employee, inform the employee of the improvement that is required, set a reasonable review period (as a guide the review period should normally be between 1 to 3 months) and confirm the arrangements for monitoring during this period (a revised PIP

should be provided).

- Consider what further support (e.g. training or shadowing etc.) is appropriate.
- Issue the employee a stage 2 outcome letter and warn the employee that unless performance improves to the required standard during or by the end the review period then the process will move to stage 3 where dismissal maybe considered.

6.5.7 The outcome of the stage 2 hearing and the action to be taken (if any) will be recorded in writing and a copy given to the employee as promptly as possible. A copy should also be placed on the employee's personnel file. Where the Leadership Team member determines no further action is required this will be confirmed.

6.5.8 If by the end of the review period the required improvement has been made, the employee will be told of this and advised that should there be further concerns with performance within 12 months of the review date the procedure will continue from the beginning of Stage 2.

6.5.9 If the Leadership Team Member feels that there has been some improvement in performance but there are still some areas of concern, they have the option to extend the review period but should seek HR support before determining.

6.6 Stage 3

6.6.1 If the employee's work performance does not improve to the required standard during or by the end of the stage 2 review period (or there are further concerns with performance within 18 months of the stage 3 review period), the line manager must prepare a report to refer the matter to a member of the Leadership Team who would normally be the LT member who heard the matter at Stage 2.

6.6.2 The Leadership Team member will write to the employee asking him/her to attend a formal interview in accordance with 6.3 above.

6.6.3 Conduct of the hearing will be as outlined in Section 6.4.1 above.

6.6.4 The Leadership Team member hearing the case may consider a range of options including (but not limited to):

- dismissing the employee;
- redeploying the employee into another suitable job at the same, or a lower, grade; or
- setting a further review period (in exceptional cases where it is believed that a substantial improvement is likely within the review period). As a guide the review period should normally be between 1 to 3 months.

6.6.5 Whichever action is decided upon, the Leadership Team member should confirm this in writing with the employee as promptly as possible. The letter should remind the employee of their right to appeal where applicable (see 7.0 below).

7. APPEALS

7.1 An employee has the right to appeal against any decision taken by the Leadership Team member after a hearing at Stage 3 of the above procedure, except for the setting of a further review period.

7.2 The employee must lodge the appeal in writing with the Head of HR & OD no later than 5 working days after the employee has been notified in writing of the decision to redeploy or to dismiss.

7.3 The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of continuity or pay.

7.4 The appeal will normally be heard by a Chief Officer, the Deputy Chief Executive or where they have already been involved the Chief Executive.

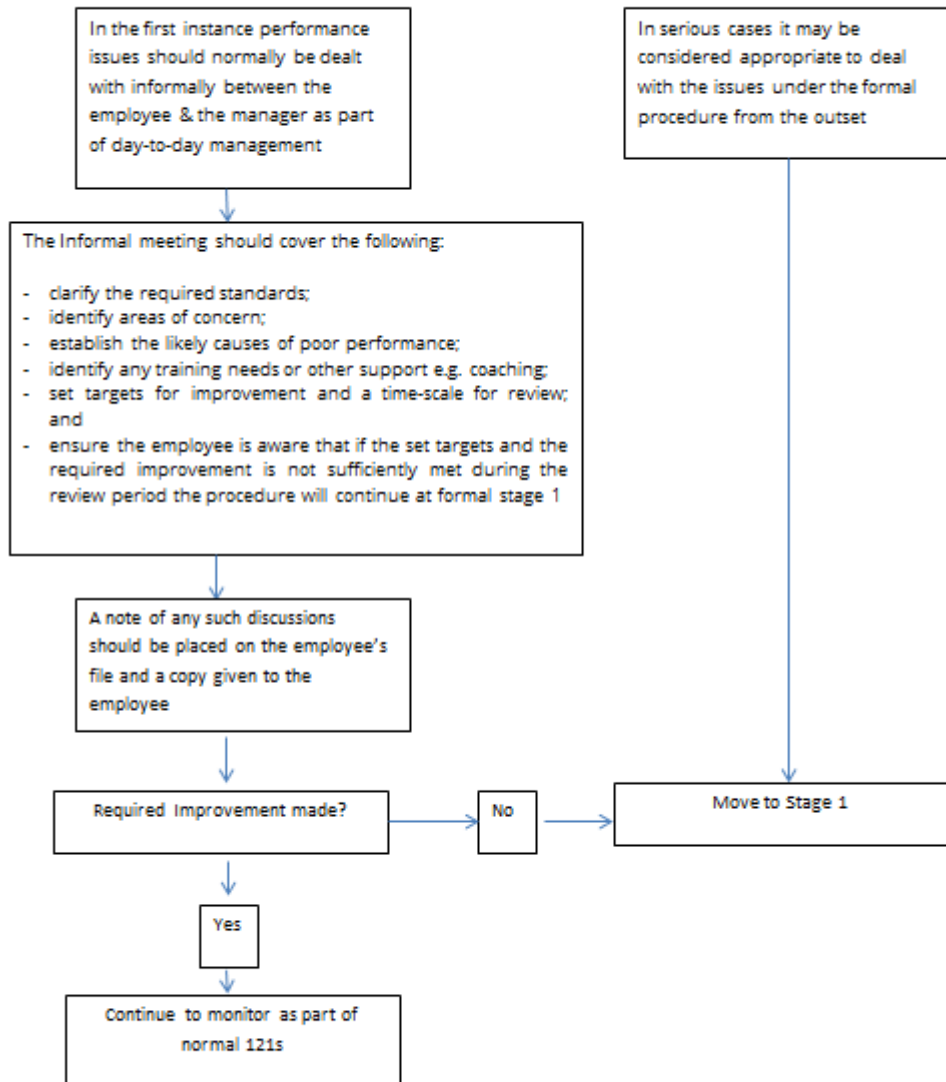
- 7.5 The employee must be notified in writing of the date and time of the appeal hearing and his/her right to be accompanied by a trade union representative or work colleague. The letter should explain that the matter may be dealt with in the employee's absence if s/he fails to attend, and that if unable to attend s/he may be represented by a trade union representative or work colleague and/or send written submissions.
- 7.6 The decision of the Chief Officer shall be final and will be confirmed in writing with the employee. There will be no further right of appeal.

8.0 Policy review and amendment

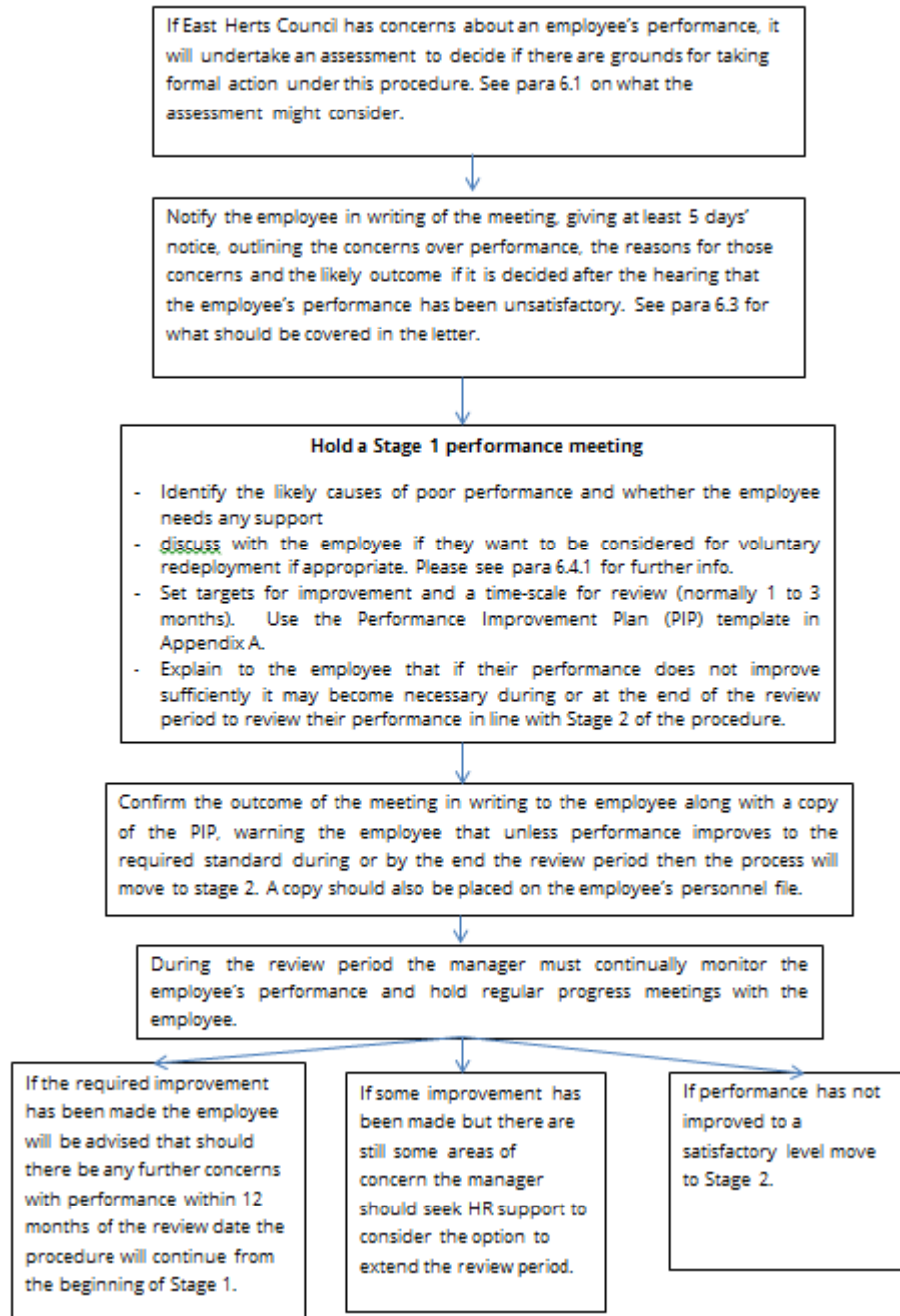
- 8.1 This policy shall be reviewed in line with legislation and best practice to reflect the best possible level of support and management.

Appendix A – Capability Procedure Flowcharts

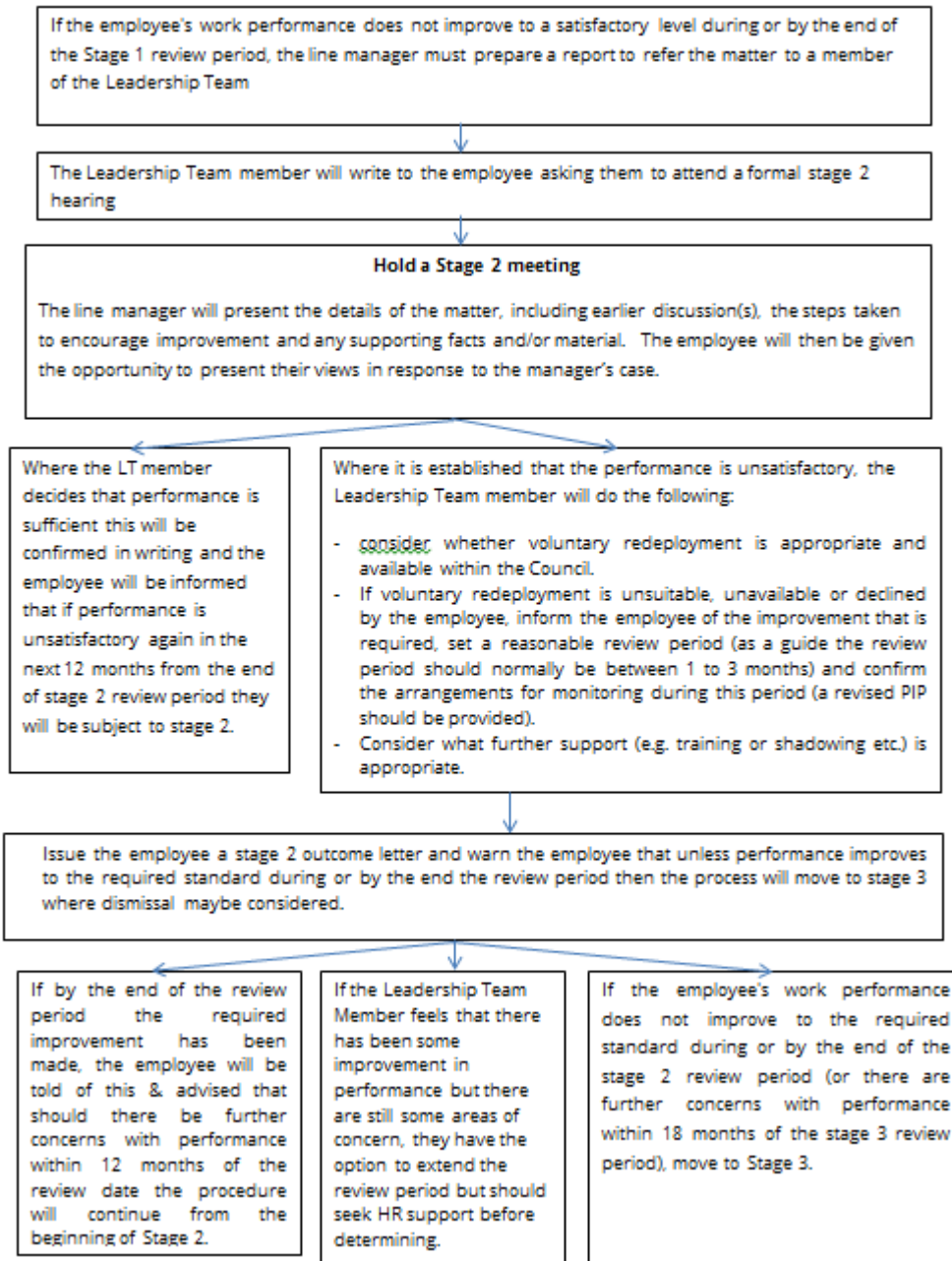
Informal Stage



Stage 1



Stage 2



Stage 3

If the employee's work performance does not improve to the required standard during or by the end of the stage 2 review period (or there are further concerns with performance within 18 months of the stage 3 review period), the line manager must prepare a report to refer the matter to a member of the Leadership Team who would normally be the LT member who heard the matter at Stage 2.

The Leadership Team member will write to the employee asking them to attend a formal stage 3 hearing

Hold a Stage 3 meeting

- Explain clearly how the employee's current performance fails to meet the required standards and go through any evidence gathered.
- Allow the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- Identify the likely causes of poor performance and whether there are further measures that may improve performance (e.g. additional training or supervision).
- discuss with the employee if they want to be considered for voluntary redeployment if appropriate.

The Leadership Team member hearing the case may consider a range of options including (but not limited to):

Dismissing the employee

Redeploying the employee into another suitable job at the same, or a lower, grade

Setting a further review period (in exceptional cases where it is believed that a substantial improvement is likely within the review period). As a guide the review period should normally be between 1 to 3 months.

Whichever action is decided upon, the Leadership Team member should confirm this in writing with the employee as promptly as possible. The letter should remind the employee of their right to appeal where applicable.

Appendix B - Performance Improvement Plan

To be completed and signed by the manager and employee as part of the Capability Policy

Name:Team:Service:Review Period Date.....

Performance standard/values and behaviours not being met	Objectives/targets required to meet the standard	Support and training to be given to assist reaching the standard	Evidence required to demonstrate the standard is met	Target/deadline for standard to be met and reviewed

I agree to the content of this document, the actions that are required of me and the objectives as set out in the PDR objectives form (please note the actions required by the manager will be to ensure the appropriate support is given to the employee)

Signed (Manager) Signed (Employee)